

ESTTA Tracking number: **ESTTA242859**Filing date: **10/15/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Pachranga International Private Limited		
Entity	Private Limited Company	Citizenship	India
Address	Sector 25 Ph. II, Panipat 45 Haryana HUDA, 132103 INDIA		

Attorney information	Paul F. Kilmer HOLLAND & KNIGHT LLP 2099 Pennsylvania Ave., NW Suite 100 Washington, DC 20006 UNITED STATES paul.kilmer@hklaw.com, ptcketing@hklaw.com, laurie.milton@hklaw.com
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Registration Subject to Cancellation

Registration No	3324346	Registration date	10/30/2007
Registrant	M/s Pachranga Syndicate Pvt. Ltd 16, Sector 29, H.U.D.A. , G.T. Road Panipat- Haryana, 132108 INDIA		

Goods/Services Subject to Cancellation

Class 029. First Use: 1994/01/01 First Use In Commerce: 1994/01/01
All goods and services in the class are cancelled, namely: Preserved, dried and cooked fruits and vegetables; pickles

Grounds for Cancellation

Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	Registrant not owner of mark and bad faith registration (15 U.S.C. Sec. 1051)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77273356	Application Date	09/06/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	PACHRANGA INTERNATIONAL ACHAR PACHRANGA PIP IN OIL TRADE MARK 5		
Design Mark			
Description of Mark	"The mark consists of PACHRANGA INTERNATIONAL in black within a red bordered rectangle on a yellow background; ACHAR PACHRANGA in red on a yellow background; PIP in red on a white background; IN OIL TRADE MARK in black on a white background; '5' in red on a yellow background; and the non-Latin characters are in black on a yellow background; on the right side of the mark is a green square and a green dot."		
Goods/Services	Class 029. First use: First Use: 1983/01/01 First Use In Commerce: 1983/01/01 Preserved, tinned, canned, dried and cooked fruits and vegetables; edible fats and oils; pickles Class 030. First use: First Use: 1983/01/01 First Use In Commerce: 1983/01/01 Condiments, namely, salt, mustard; vinegar, sauces, chutneys; spice		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	PACHRANGA word mark		
Goods/Services	food products		

Attachments	77273356#TMSN.jpeg (1 page)(bytes) PACHRANGA - 346 Petition to Cancel Registration.PDF (12 pages)(493646 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

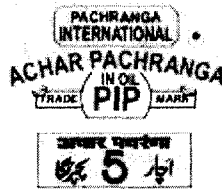
Signature	/Paul Kilmer/
Name	Paul F. Kilmer
Date	10/15/2008

)	
PACHRANGA INTERNATIONAL)	
PRIVATE LIMITED)	
)	
Petitioner)	
)	
v.)	Cancellation No. _____
)	
)	(Registration No. 3324346)
M/S PACHRANGA SYNDICATE PVT. LTD.)	(PACHRANGA)
)	
Registrant)	
)	

Pachranga International Private Limited ("Petitioner"), a private limited company of India with its principal place of business located at 45, Huda, Section 25 Ph. II, Panipat, Haryana, India 132103, believes that it will be damaged by the continued registration of the PACHRANGA mark claimed in U.S. Patent and Trademark Office trademark Registration No. 3324346 (the "346 Registration") owned by M/s Pachranga Syndicate Pvt. Ltd. and registered on October 30, 2007, and hereby requests cancellation of said registration under the provisions of Section 14 of the Trademark Act of 1946, 15 U.S.C. §1064.

1. Petitioner is the owner of all right, title, and interest in and to the trade name and trademark PACHRANGA and composite marks that contain the name and

mark PACHRANGA (collectively: "PACHRANGA Marks"), including the following label mark, in the field of food products:



2. Petitioner has applied to register the foregoing label mark in the United States Patent and Trademark. The said application has been given Serial No. 77273356 and has been refused registration based upon prior Registration Nos. 3324346 (the registration here sought to be cancelled) and 3440728.

3. Petitioner's predecessor in interest commenced use of the PACHRANGA mark in 1925 in undivided India and has continuously used the name and mark PACHRANGA in commerce with the United States since as early as 1983.

4. As result of Petitioner's extensive, long and continuous use, advertising and promotion of the PACHRANGA name and mark in U.S. commerce, the PACHRANGA name and mark have become well and favorably recognized and distinctive and famous in the United States as symbolizing food products emanating from Petitioner, and Petitioner has developed common law trademark rights therein. Petitioner therefore has the exclusive right to use and register the PACHRANGA Marks in the United States.

5. Notwithstanding Petitioner's prior rights in the PACHRANGA Marks, on June 13, 2006, Registrant, with full knowledge of the prior rights of Petitioner, filed a use-based application for the mark PACHRANGA which later matured into the '346 Registration.

6. In its application, Registrant asserted use of the PACHRANGA mark in lawful commerce with the United States from a date at least as early as January 1, 1994. On information and belief, contrary to the assertions of Registrant in its application for the PACHRANGA mark which matured into the '346 Registration, Registrant did not make lawful use of the PACHRANGA mark in commerce with the United States on or prior to January 1, 1994 and Registrant was not making lawful use of the PACHRANGA mark in commerce on the date on which it filed the application which matured into the '346 Registration (June 13, 2006).

7. On information and belief, neither Registrant nor any of its lawful predecessors in interest were in existence on January 1, 1994, which is claimed as the date of first use and first use in commerce in the '346 Registration, and therefore could not have used the PACHRANGA mark on or before that date. On information and belief, Registrant came into existence on some later date in 1994, whereas Petitioner had already been using the PACHRANGA mark in commerce from 1983, more than a decade earlier.

8. On information and belief, Registrant knew or had reason to know of Petitioner's prior rights in the PACHRANGA Marks when Registrant filed its application which matured into the '346 Registration. In this regard it should be noted that the Registrant is a defendant in an infringement action brought by Petitioner in the High Court of Delhi, India and was made aware of the rights and claims of Petitioner at least as early as 1999. Due to the past business association of the principals of Petitioner and Registrant, it is also apparent that Registrant was well aware of the prior rights of the Petitioner in and to the PACHRANGA Marks in India and elsewhere, including the United States, prior to 1999 and that Registrant knew that it was not at liberty to claim rights in and to the PACHRANGA Marks or any confusingly similar marks or names in the United States.

9. The '346 Registration has been cited as a bar to registration of Petitioner's label mark as shown in paragraph 1 of this Petition and as claimed in Petitioner's application Serial No. 77273356. On information and belief, Petitioner will be unable to register its label mark unless the '346 Registration is cancelled and thereby removed as a bar to registration of Petitioner's mark. As a result, unless the '346 Registration is cancelled, Petitioner will not be entitled to the rights flowing from federal registration of its PACHRANGA label mark and its other PACHRANGA Marks, and Petitioner will suffer injury and damage in the ability to protect its name and marks as a result thereof.

10. The PACHRANGA mark is inherently strong and arbitrary as applied to the food products of the parties.

11. The PACHRANGA mark is strong in the marketplace in the United States and the only party with a legitimate claim to ownership thereof in the United States is Petitioner.

12. On information and belief, the goods of the parties sold under and by reference to their PACHRANGA marks travel in some of the same channels of trade and are sold to some of the same classes of purchasers.

COUNT I

Likelihood of Confusion - §2(d)

13. Petitioner realleges and incorporates herein by reference the allegations made in paragraphs 1 through 12, above, as if set forth in their entirety herein.

14. The mark which Registrant has registered in the '346 Registration is identical to or so closely resembles Petitioner's PACHRANGA Marks in appearance,

sound and/or meaning that the use and continued registration thereof by Registrant is likely to cause confusion, mistake, and deception as to the source or origin of Registrant's goods and will injure and damage Petitioner and the goodwill and reputation symbolized by the Petitioner's PACHRANGA Marks.

15. The goods of Registrant as claimed in the '346 Registration are either identical in nature or are so closely related to the goods of Petitioner that the public is likely to be confused, to be deceived, and to assume erroneously that Registrant's goods are those of Petitioner or that Registrant is in some way connected with or sponsored by or affiliated with Petitioner, all to Petitioner's irreparable damage and injury.

16. Likelihood of confusion in this case is enhanced by the fame of Petitioner's PACHRANGA Marks and by the fact that consumers associate these marks with goods sold, approved or endorsed by Petitioner; moreover, purchasers of Registrant's goods are prospective purchasers of Petitioner's goods.

17. Under the circumstances, continued registration and use of Registrant's PACHRANGA mark is likely to cause Petitioner to lose control over its reputation, which is represented by and derived from Petitioner's PACHRANGA Marks.

18. Continued registration of Registrant's PACHRANGA mark in light of the prior rights of Petitioner in its PACHRANGA Marks is therefore likely to cause confusion, mistake and/or deception among members of the relevant purchasing public resulting in damage and injury to Petitioner in violation of the provisions of Section 2(d) of the Trademark Act. 15 U.S.C. §1052(d).

COUNT II

Deception/False Suggestion of Connection - §2(a)

19. Petitioner realleges and incorporates herein by reference the allegations made in paragraphs 1 through 18, above, as if set forth in their entirety herein.

20. Registrant's mark so closely resembles Petitioner's PACHRANGA trade name that it is likely to cause deception in violation of Section 2(a) of the Trademark Act, in that the Registrant's mark misdescribes the nature or origin of the goods of Registrant, will mislead likely purchasers as to the nature or origin of the Registrant's goods, and is likely to materially alter purchasers' decisions to acquire Petitioner's goods and/or avoid the selection or purchase of Petitioner's goods in the event that purchasers find Registrant's goods unsatisfactory.

21. Registrant's mark so closely resembles Petitioner's PACHRANGA trade name that it falsely suggests a connection with Petitioner in violation of Section 2(a) of the Trademark Act in that Registrant's mark points uniquely to Petitioner and purchasers will falsely assume that goods offered under Registrant's mark are connected with Petitioner.

22. Registrant's mark is deceptive in that it falsely suggests a connection with or approval by the Petitioner, to Petitioner's damage and injury and in violation of the provisions of Section 2(a) of the Trademark Act. 15 U.S.C. §1052(a).

COUNT III

Registrant Not Owner of Mark / Bad Faith Registration/ Fraud on the Patent and Trademark Office

23. Petitioner realleges and incorporates herein by reference the allegations made in paragraphs 1 through 22, above, as if set forth in their entirety herein.

24. In relation to the filing of the application for what is now the '346 Registration, Registrant executed a required Declaration which states, in pertinent part, that the authorized representative of Registrant ". . . believes Registrant to be owner of the trademark/service mark sought to be registered . . . ; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive"

25. As noted previously herein, Registrant knew or should have known at the time its authorized representative executed the Declaration in association with the application for the '346 Registration that Registrant did not have the right to lawfully use the mark claimed in the application and that, as a consequence, Registrant could not lawfully file the application or lawfully obtain the '346 Registration based thereon. Registrant committed fraud on the U.S. Patent and Trademark office in this regard by making a knowingly false representation in its Declaration with the intention of inducing the U.S. Patent and Trademark Office to issue a registration to the Registrant. Registrant's knowing misrepresentation in its Declaration was material to the decision of the U.S. Patent and Trademark Office to issue the '346 Registration in reasonable reliance thereon and resulted in giving Registrant false color of right and title in and to the PACHRANGA mark. Petitioner

has been denied registration of its PACHRANGA label mark as a direct result of the fraud of Registrant and Petitioner has thus suffered damage and injury to its ability to claim title in and to the PACHRANGA Marks and protect them in U.S. commerce.

26. On information and belief, Registrant further falsely and fraudulently misrepresented to the U.S. Patent and Trademark Office that Registrant had used the PACHRANGA mark since at least as early as January 1, 1994, which assertion was material to Registrant's claim of use and priority in the mark and was made with the intent to deceive, and did deceive, the U.S. Patent and Trademark Office into reasonable reliance thereon and resulted in issuance of the '346 Registration with a claim of first use and first use in commerce of the PACHRANGA mark of January 1, 1994. The fraud of Registrant allowed it to maintain the application for the PACHRANGA mark as "use" based and thereby avoid additional time, fees and expenses associated with processing the application as "intent-use." The fraud of the Registrant further made it appear, falsely, that it had used its PACHRANGA mark in U.S. commerce alongside the Petitioner's PACHRANGA Marks for more than a decade, thereby diluting, diminishing and eroding the rights of Petitioner in its PACHRANGA Marks, to the damage and injury of Petitioner.

27. On information and belief, Registrant is barred by contract from claiming any rights in the PACHRANGA mark and nevertheless filed the application which matured into the '346 Registration with full knowledge that it was so barred from claiming ownership in the PACHRANGA mark.

28. Under the circumstances, the filing of the application for the '346 Registration was in bad faith and unlawful, and the execution by an authorized representative of Registrant of the required Declaration therefor constituted fraud upon the U.S. Patent and Trademark Office, was material to Registrant's claim of right and title to the PACHRANGA mark and the '346 Registration, was reasonably relied upon by the U.S. Patent and Trademark Office in issuing the '346 Registration,

has injured and continues to injure the Petitioner, and was in violation of the provisions of Section 1(a) of the Trademark Act of 1946 (as amended)(15 U.S.C. Section 1051).

COUNT IV

Dilution - §43(c)

29. Petitioner realleges and incorporates herein by reference the allegations made in paragraphs 1 through 28, above, as if set forth in their entirety herein.

30. Petitioner's PACHRANGA Marks are arbitrary and inherently strong as applied to the goods of Petitioner, and Petitioner's PACHRANGA Marks have been widely used and extensively advertised in the United States and, therefore, those marks have become well known and famous as distinctive symbols of Petitioner's goodwill.

31. On information and belief, Registrant has used or intends to use its PACHRANGA mark in U.S. commerce with the willful intent to trade on Petitioner's reputation or to cause dilution of Petitioner's famous PACHRANGA Marks.

32. Petitioner's PACHRANGA Marks became well known and famous before Registrant made any use of its PACHRANGA mark and prior to the filing date of the application which matured into the '346 Registration.

33. Registrant's PACHRANGA mark will cause dilution of the distinctive quality of Petitioner's PACHRANGA Marks.

34. Use and continued registration of Registrant's PACHRANGA mark will lessen the capacity of Petitioner's famous PACHRANGA Marks to identify and distinguish Petitioner's goods from those of others.

35. Likelihood of dilution, disparagement, tarnishment and deception is enhanced by the fact that the parties' goods are sold or intended for sale through the same trade channels to the same classes of prospective purchasers.

36. Use and continued registration of the PACHRANGA mark by Registrant will deprive Petitioner of the ability to protect its reputation, persona, and goodwill.

37. Likelihood of damage to Petitioner's goodwill is enhanced by the fact that prospective customers who encounter defects in the quality of Registrant's goods will attribute those defects to Petitioner, and this will dilute Petitioner's reputation and goodwill.

38. By reason of the foregoing, Petitioner will be damaged by the continued registration of Registrant's mark and the '346 Registration should therefore be cancelled pursuant to the provisions of Section 43(c) of the Trademark Act. 15 U.S.C. §1125(c).

The required fee has been provided. Any additional charges should be made to the Deposit Account of Holland & Knight LLP, Account No. 50-1542.

WHEREFORE, Petitioner prays that this petition be sustained and that the '346
Registration be cancelled.

A handwritten signature in black ink, appearing to read 'Paul F. Kilmer', is written over a horizontal line.

Paul F. Kilmer
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(202) 955-3000

Attorneys for Petitioner
PACHRANGA INTERNATIONAL PRIVATE LIMITED

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this foregoing Petition to Cancel Registration was served upon Registrant's counsel, Michael J. Hynak, Hynak & Associates, PC, 812 South Courthouse Road, Arlington, Virginia 22204, by First Class Mail, postage prepaid, on this 15th day of October, 2008.

A handwritten signature in black ink, appearing to be "Dun", written over a horizontal line.